



**U.S. Citizenship
and Immigration
Services**

**Non-Precedent Decision of the
Administrative Appeals Office**

In Re: 15796476

Date: JULY 28, 2021

Appeal of Texas Service Center Decision

Form I-140, Immigrant Petition for Alien Worker (Advanced Degree, Exceptional Ability, National Interest Waiver)

The Petitioner, a software developer, seeks second preference immigrant classification as a member of the professions holding an advanced degree, as well as a national interest waiver of the job offer requirement attached to this EB-2 classification. *See* Immigration and Nationality Act (the Act) section 203(b)(2), 8 U.S.C. § 1153(b)(2).

The Director of the Texas Service Center denied the petition, concluding that the Petitioner qualified for classification as a member of the professions holding an advanced degree, but that he had not established that a waiver of the required job offer, and thus of the labor certification, would be in the national interest.

On appeal, the Petitioner submits additional documentation and a brief asserting that he is eligible for a national interest waiver.

In these proceedings, it is the petitioner's burden to establish eligibility for the immigration benefit sought. Section 291 of the Act, 8 U.S.C. § 1361. Upon *de novo* review, we will dismiss the appeal.

I. LAW

To establish eligibility for a national interest waiver, a petitioner must first demonstrate qualification for the underlying EB-2 visa classification, as either an advanced degree professional or an individual of exceptional ability in the sciences, arts, or business. Because this classification requires that the individual's services be sought by a U.S. employer, a separate showing is required to establish that a waiver of the job offer requirement is in the national interest.

Section 203(b) of the Act sets out this sequential framework:

- (2) Aliens who are members of the professions holding advanced degrees or aliens of exceptional ability. –

(A) In general. – Visas shall be made available . . . to qualified immigrants who are members of the professions holding advanced degrees or their equivalent or who because of their exceptional ability in the sciences, arts, or business, will substantially benefit prospectively the national economy, cultural or educational interests, or welfare of the United States, and whose services in the sciences, arts, professions, or business are sought by an employer in the United States.

(B) Waiver of job offer –

(i) National interest waiver. . . . [T]he Attorney General may, when the Attorney General deems it to be in the national interest, waive the requirements of subparagraph (A) that an alien's services in the sciences, arts, professions, or business be sought by an employer in the United States.

While neither the statute nor the pertinent regulations define the term “national interest,” we set forth a framework for adjudicating national interest waiver petitions in the precedent decision *Matter of Dhanasar*, 26 I&N Dec. 884 (AAO 2016). *Dhanasar* states that after a petitioner has established eligibility for EB-2 classification, U.S. Citizenship and Immigration Services (USCIS) may, as matter of discretion¹, grant a national interest waiver if the petitioner demonstrates: (1) that the foreign national’s proposed endeavor has both substantial merit and national importance; (2) that the foreign national is well positioned to advance the proposed endeavor; and (3) that, on balance, it would be beneficial to the United States to waive the requirements of a job offer and thus of a labor certification.

The first prong, substantial merit and national importance, focuses on the specific endeavor that the foreign national proposes to undertake. The endeavor’s merit may be demonstrated in a range of areas such as business, entrepreneurialism, science, technology, culture, health, or education. In determining whether the proposed endeavor has national importance, we consider its potential prospective impact.

The second prong shifts the focus from the proposed endeavor to the foreign national. To determine whether he or she is well positioned to advance the proposed endeavor, we consider factors including, but not limited to: the individual’s education, skills, knowledge and record of success in related or similar efforts; a model or plan for future activities; any progress towards achieving the proposed endeavor; and the interest of potential customers, users, investors, or other relevant entities or individuals.

The third prong requires the petitioner to demonstrate that, on balance, it would be beneficial to the United States to waive the requirements of a job offer and thus of a labor certification. In performing this analysis, USCIS may evaluate factors such as: whether, in light of the nature of the foreign national’s qualifications or the proposed endeavor, it would be impractical either for the foreign national to secure a job offer or for the petitioner to obtain a labor certification; whether, even assuming that other qualified U.S. workers are available, the United States would still benefit from the foreign

¹ See also *Poursina v. USCIS*, No. 17-16579, 2019 WL 4051593 (Aug. 28, 2019) (finding USCIS’ decision to grant or deny a national interest waiver to be discretionary in nature).

national's contributions; and whether the national interest in the foreign national's contributions is sufficiently urgent to warrant forgoing the labor certification process. In each case, the factor(s) considered must, taken together, indicate that on balance, it would be beneficial to the United States to waive the requirements of a job offer and thus of a labor certification.²

II. ANALYSIS

The Director found that the Petitioner qualifies as a member of the professions holding an advanced degree. The remaining issue to be determined is whether the Petitioner has established that a waiver of the requirement of a job offer, and thus a labor certification, would be in the national interest. For the reasons discussed below, we agree with the Director that the Petitioner has not sufficiently demonstrated the national importance of his proposed endeavor under the first prong of the *Dhanasar* analytical framework.

Regarding his claim of eligibility under *Dhanasar*'s first prong, the Petitioner initially indicated that he intends "to continue working as a Software Developer in the information technology (IT) industry, analyzing, developing, engineering, and implementing tailor-made software for companies in a plethora of industries that help us in everyday life." He further stated that he plans to provide "technological services to U.S. companies that require my unique skillset to further their technological objectives and financial gains, therefore benefiting the economy."

In response to the Director's request for evidence (RFE), the Petitioner asserted: "I intend to continue using my expertise and knowledge working as a software developer in the field of IT in the United States, specifically focusing on systems development, web development, cybersecurity, and strategic planning." He also stated: "My overall proposed endeavor in the United states is to offer my expertise to fill the gap of IT skilled professionals in the U.S. and bring innovative results to local companies, organizations and individuals improving both their social and monetary interests." In addition, the Petitioner indicated that he is currently working as a "Front-End Web Developer" for [REDACTED] University's [REDACTED] Professional Education (CPE) "developing and maintaining the [CPE's] main website as well as all other microsites, related sites and web services."³

The Petitioner response to the Director's RFE included a March 2020 letter from [REDACTED] Director of Marketing for [REDACTED] University's CPE, discussing the Beneficiary's job responsibilities. [REDACTED] stated:

As a web developer, [the Beneficiary] has been solely responsible for the development and maintenance of all websites in the CPE department. Currently, he takes care of the main website [https://\[REDACTED\]](https://[REDACTED]) which receives an average of 12,000 unique hits per month and is the website responsible for promoting all the courses offered by the department and also directs the online sale of the courses. He is responsible for the design, modification and development of web systems using advanced techniques for

² See *Dhanasar*, 26 I&N Dec. at 888-91, for elaboration on these three prongs.

³ As the Petitioner is applying for a waiver of the job offer requirement, it is not necessary for him to have a job offer from a specific employer. However, we consider information about this position to illustrate the capacity in which he intends to work in order to determine whether his proposed endeavor meets the requirements of the *Dhanasar* framework.

implementation and problem solving He also takes care [of] the department's website, which is the main entry point for new students.

With the appeal, the Petitioner submits a letter from [REDACTED] Director of Community Programs for [REDACTED] University's CPE, indicating that the Beneficiary "has played a central role in making the user experience of browsing and registering for courses as easy as possible. With a mandate to create an experience that even his tech-illiterate parents could use, he has developed a new web experience for our students at [REDACTED]."

The record includes information about the technology industry outlook, the effect of cloud enterprise resource planning on business success, the growing importance of the technology economy, factors contributing to a company's successful data migration, technology as a business priority, the effect of IT on the structure of the modern corporation, talent shortages in the technology industry, and the decline in science and engineering proficiency as a threat to U.S. national security. In addition, the Petitioner provided articles discussing technology company acquisitions, the technology industry as a driver of the U.S. economy, the changing role of IT in the future of business, big data opportunities and challenges, the influence of information systems on business performance, trends in the IT sector, the costs associated with IT system downtime, the effect of the technology industry on U.S. economic growth, and a projected shortfall of Americans trained in science and engineering. He also submitted information about immigrant entrepreneurship as a driver of U.S. innovation, the U.S. technology industry's reliance on immigrants, business transformation for the digital age, the economic effects of information communications technology, business expectations in the post-digital era, the costs of unplanned IT outages, immigrants' role in economic growth, the occupational outlook for software developers, and a projected global talent crunch. The record therefore supports the Director's determination that the Petitioner's proposed work as a software developer has substantial merit.

In determining national importance, the relevant question is not the importance of the field, industry, or profession in which the individual will work; instead we focus on the "the specific endeavor that the foreign national proposes to undertake." *See Dhanasar*, 26 I&N Dec. at 889. In *Dhanasar*, we further noted that "we look for broader implications" of the proposed endeavor and that "[a]n undertaking may have national importance for example, because it has national or even global implications within a particular field." *Id.* We also stated that "[a]n endeavor that has significant potential to employ U.S. workers or has other substantial positive economic effects, particularly in an economically depressed area, for instance, may well be understood to have national importance." *Id.* at 890.

In his appeal brief, the Petitioner asserts that he "has over 12 years of progressive experience in the IT field" in areas such as "project planning, specification of requirements, [and] development and maintenance of software systems." He also points to his Master of Business Administration degree and bachelor's degree. The Petitioner's skills and knowledge in his field relate to the second prong of the *Dhanasar* framework, which "shifts the focus from the proposed endeavor to the foreign national." *Id.* at 890. The issue here is whether the specific endeavor that he proposes to undertake has national importance under *Dhanasar*'s first prong.

Additionally, the Petitioner argues that his proposed endeavor offers "substantially positive economic effects, due to the ripple effects of his professional activities within the field." He contends that his

undertaking helps students “advance their careers by creating a flawless user experience and functioning website.” The Petitioner further asserts that his proposed work “is unquestionably of national importance, given the significant economic impact of building new skilled workforce in the United States.” In addition, he indicates that “[t]he United States is presently facing a concerning shortage of IT professionals, and leading trends suggest that the U.S. is fast approaching a technology crisis” due to our country’s “IT skills gap.”⁴ The Petitioner also claims that his endeavor stands to affect the national economy by “driving results for U.S. higher education institutions,” “helping them to keep up with the fast-pace of technological innovations and practices,” and “enabl[ing] them to generate revenue and progress in meeting their educational objectives.”

To evaluate whether the Petitioner’s proposed endeavor satisfies the national importance requirement we look to evidence documenting the “potential prospective impact” of his work. Although the Petitioner’s statements reflect his intention to provide valuable software development services for

University or any other future U.S. employer, he has not offered sufficient information and evidence to demonstrate that the prospective impact of his proposed endeavor rises to the level of national importance. In *Dhanasar* we determined that the petitioner’s teaching activities did not rise to the level of having national importance because they would not impact his field more broadly. *Id.* at 893. Here, we conclude the record does not show that the Petitioner’s proposed endeavor stands to sufficiently extend beyond his employer and its IT systems’ users to impact the field or the U.S. higher education system more broadly at a level commensurate with national importance.

Furthermore, the Petitioner has not demonstrated that the specific endeavor he proposes to undertake has significant potential to employ U.S. workers or otherwise offers substantial positive economic effects for our nation. Without sufficient information or evidence regarding any projected U.S. economic impact or job creation attributable to his future work, the record does not show that benefits to the regional or national economy resulting from the Petitioner’s software development projects would reach the level of “substantial positive economic effects” contemplated by *Dhanasar*. *Id.* at 890. Accordingly, the Petitioner’s proposed work does not meet the first prong of the *Dhanasar* framework.

Because the documentation in the record does not establish the national importance of his proposed endeavor as required by the first prong of the *Dhanasar* precedent decision, the Petitioner has not demonstrated eligibility for a national interest waiver. Further analysis of his eligibility under the second and third prongs outlined in *Dhanasar*, therefore, would serve no meaningful purpose.

III. CONCLUSION

As the Petitioner has not met the requisite first prong of the *Dhanasar* analytical framework, we conclude that he has not established he is eligible for or otherwise merits a national interest waiver as a matter of discretion. The appeal will be dismissed for the above stated reasons, with each considered as an independent and alternate basis for the decision.

ORDER: The appeal is dismissed.

⁴ Regarding this issue, the Petitioner states that he is “helping to fill the urgent shortage of qualified IT professionals in the U.S.” We note that the U.S. Department of Labor addresses shortages of qualified workers through the labor certification process. Accordingly, a shortage alone does not demonstrate that waiving the requirement of a labor certification would benefit the United States.